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Special Feature

Emergency Preparedness and Disability

*Michael E. Waterstone and Michael Ashley Stein

Historically, federal-level disaster preparedness has not adequately acknowledged the circumstances of persons with disabilities. On July 24, 2004, President Bush issued an Executive Order, entitled *Individuals with Disabilities in Emergency Preparedness*, unambiguously requiring that administrative agencies play a crucial role in supporting the safety and security of individuals with disabilities in situations involving disasters, including floods and hurricanes.¹ Nevertheless, the National Response Plan—issued by the Department of Homeland Security in December 2004 as an “all-discipline, all-hazards plan that establishes a single comprehensive framework for the management of domestic incidents”—nowhere mentions the disabled.²

In July 2005, a year after the Executive Order, the Interagency Coordinating Council (ICC), which is comprised of senior leadership from 23 federal departments and agencies, issued an interagency report discussing the vulnerabilities and challenges facing the 54 million Americans with disabilities in time of disaster.³ The report recognized that disaster mitigation, preparedness, response, and recovery planning efforts overlooked people with disabilities. Although it attempted the first steps of establishing a concerted interagency approach to deal with these complex issues, the report was operating in the shadow of overwhelming historic neglect.

The Katrina and Rita Experiences

The various federal administrative agencies charged with disaster preparedness—primarily, though not exclusively, the Department of Homeland Security, the Federal Emergency Management Agency (FEMA), and the Department of Health and Human Services—and the larger effort of federal/state disaster relief coordination failed in their obligations to provide for the needs of persons with disabilities during Hurricanes Katrina and Rita. Temporary shelters lacked accessible entrances and restrooms; people with disabilities were separated from their families, who often provide them support; and evacuees were displaced without assistive technologies.⁴ The mainstream relief entities were severely challenged in finding medical necessities, including wheelchairs and medication; obtaining Braille and captioned information; and securing personal assistance services.⁵ The National Organization on Disability reported that less than 30 percent of shelters had access to American sign language interpreters; 80 percent lacked TTYs; 60 percent did not have televisions with open caption capability; and only 56 percent had areas where oral announcements were posted.⁶

Moreover, people with disabilities had no centralized source of disability-related information, and relief workers had not been trained to assist them.⁷ Worse, many shelters turned away disability specialists and their offered assistance. For example, disability organizations in Louisiana had difficulty securing permission to enter shelters so as to identify the needs of evacuees with disabilities, and to provide them with service referrals.⁸ Currently, disability professionals in the Gulf Coast areas report an impending crisis, as Red Cross shelters are being closed without plans for accessible

housing alternatives.⁹

Consider the FEMA application of a 51-year-old woman with a spinal injury, who we will refer to as Latasha to preserve her privacy.¹⁰ On August 29, 2005, the day that Hurricane Rita struck, Latasha was carried to the attic in her home and remained there in her wheelchair until rescued on September 3. She developed pressure sores, which became infected from contact with floodwaters during her rescue. After being hospitalized for almost six weeks, she broke her leg getting into a tub in an inaccessible bathroom. Latasha’s shower chair replacement, estimated at \$1,200, was refused by Medicare, and she needs more in catheters, bags, and wound care supplies than Medicare provides. The cost of replacing her accessible van was estimated at \$19,000—more than her auto insurance covered. Latasha needs to travel to Jackson for wound care every two weeks, and each trip costs \$100 in gas and expenses.

Future Policy Planning

Litigation under existing civil rights statutes is one way of improving the government’s disaster preparedness for people with disabilities. In *Brou v. FEMA*,¹¹ a class of persons with disabilities brought suit against FEMA under the Rehabilitation Act §504,¹² the Fair Housing Amendments Act,¹³ and the Stafford Act,¹⁴ seeking injunctive relief requiring FEMA to provide accessible trailers on a timely basis to evacuees with disabilities, and to develop information systems sufficient to enable FEMA to consistently identify evacuees with disabilities and their need for accommodations. While this case is still at an early stage and no significant motions have been decided, the relief plaintiffs request could improve FEMA’s performance in future disasters. In addition to these statutes, Title II of the Americans with Disabilities Act (ADA)¹⁵ applies to state and local government programs, services, and activities, including disaster recovery programs.¹⁶ Making local government emergency preparedness and response programs accessible to people with disabilities is required by the ADA.¹⁷

Although the importance of litigation cannot be disregarded, disaster preparedness ultimately demands a better integrated and implemented policy approach throughout the federal government. Among the lessons learned from Hurricanes Katrina and Rita is that the needs of the disabled population must be both recognized and integrated into future federal policy planning. The disability community has an important role to play in impacting new and more proactive policy measures. Policymakers can only properly target priorities and develop appropriate responses if they first acknowledge the life experience and concerns of persons with disabilities.

There are signs from within the federal government that expertise on issues impacting the disability community will gain a stronger foothold in disaster planning. After Hurricanes Katrina and Rita, President Bush ordered the Department of Homeland Security to conduct a review, in cooperation with local counterparts, of emergency plans in every major city. In a September 23, 2005 memo, Secretary Michael Chertoff ordered that this review include rigorous examination of plans for persons with disabilities. The ICC has issued preliminary statements on lessons learned from Hurricanes Katrina and Rita and disaster preparedness,¹⁸ with the formal report set to be issued in July 2006. In addition, Senator Harkin has

proposed Senate Bill 2124 (“Emergency Preparedness and Response for Individuals with Disabilities”).¹⁹ Amongst other things, the law would create a disability coordinator within the Department of Homeland Security who would act as a focal point for the federal government’s disability disaster preparedness policies and be responsible for turning the ICC’s findings into reality.

Finally, the Department of Justice (DOJ) released a new technical assistance document entitled, “An ADA Guide for Local Governments, Making Community Emergency Preparedness and Response Programs Accessible to People with Disabilities.” In this Guide, the DOJ sets forth “action steps” in five areas: planning, notification, evacuation, sheltering, and returning home. These steps include soliciting and incorporating input from people with different types of disabilities; ensuring that evacuation plans enable the disabled to safely evacuate or be evacuated by others; ensuring that temporary shelters are accessible; developing site-specific instructions for shelter staff and volunteers to address disability-related concerns; ensuring that persons who use service animals are not separated from them when sheltering; making certain that a reasonable number of shelters have back-up generators for life-saving medical devices and a way to keep medications such as insulin refrigerated; providing accessible communication for individuals who are deaf, hard of hearing, blind, and visually impaired; and identifying temporary accessible housing that can be used if persons with disabilities cannot immediately return home.

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ENDNOTES

¹ Exec. Order No. 13,347, 2004 WL 1645056, 69 Fed. Reg. 44,573.

² U.S. DEPARTMENT OF HOMELAND SECURITY, NATIONAL RESPONSE PLAN iii (DEC. 2004), available at <http://www.dhs.gov/interweb/assetlibrary/NRPbaseplan.pdf#search=national%20response%20plan%20december%202004%20homeland%20security>.

³ U.S. DEPARTMENT OF HOMELAND SECURITY Office for

Civil Rights and Civil Liberties, Individuals with Disabilities in Emergency Preparedness (JULY 2005), available at <http://www.dhs.gov/disabilitypreparednessICC>.

⁴ Lex Frieden, *Involve People with Disabilities in Relief Plans: Let’s Learn from Our Mistakes Before the Next Disaster Strikes*, THE CLARION-LEDGER, Jan. 7, 2006.

⁵ *Id.*

⁶ See also THE HENRY J. KAISER FAMILY FOUNDATION, THE WASHINGTON POST/KAISER FAMILY FOUNDATION/HARVARD UNIVERSITY SURVEY OF HURRICANE KATRINA EVACUEES (SEPT. 2005), available at <http://www.kff.org/newsmedia/upload/7401.pdf> (detailing that 22% of polled Astrodome evacuees were physically unable to leave, and 23% were caring for someone who was physically unable to leave).

⁷ See Frieden, *supra* note 4.

⁸ *Id.*

⁹ *Id.* See also Jennifer Medina, *Storm and Crisis: Voices from the Storm; Stuck in a Shelter, and Left Asking “Why?”*, N.Y. TIMES, Oct. 5, 2006; Mary Jimenez, *Bossier Civic Center Closes Special Needs Shelter*, SHREVEPORT TIMES, Oct. 7, 2005.

¹⁰ The following information is taken from Latasha’s application to FEMA for assistance.

¹¹ No. 06-0838 (E.D. La. filed Feb. 16, 2006).

¹² 29 U.S.C. §794(a).

¹³ 42 U.S.C. §§3601-631.

¹⁴ *Id.* at §5170 *et seq.*

¹⁵ *Id.* at §§12131-165.

¹⁶ See DEPARTMENT OF JUSTICE, ADA GUIDE FOR LOCAL GOVERNMENTS, MAKING COMMUNITY EMERGENCY PREPAREDNESS AND RESPONSE PROGRAMS ACCESSIBLE TO PEOPLE WITH DISABILITIES, available at <http://www.ada.gov/publicat.htm#Anchor-Emergency>.

¹⁷ *Id.*

¹⁸ The ICC’s Council plans are set forth in a PowerPoint entitled, *Interagency Coordinating Council on Emergency Preparedness and Individuals with Disabilities: Hurricane Katrina Lessons Learned, Proposed Approach* (Feb. 15, 2006), and in a brief article entitled, *The Impact of Hurricanes Katrina and Rita on People with Disabilities: What Lessons Should We Learn?* (Mar. 2006). These documents are on file with the authors.

¹⁹ Available at <http://thomas.loc.gov/cgi-bin/query/C?c109://temp/~c1090GJGac>.